

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 22, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

v.

CITY OF SUNNYSIDE; AL
ESCALERA, in his official and
individual capacities; MELISSA
RIVAS, in her official and individual
capacities; CHRISTOPHER
SPARKS, in his official and
individual capacities; JOEY
GLOSSEN, in his official and
individual capacities; and JAMES
RIVARD, in his official and
individual capacities,

Defendants.

NO: 1:20-CV-3018-RMP

STIPULATED PROTECTIVE
ORDER

BEFORE THE COURT is the parties' Motion for Entry of a Stipulated Protective Order, ECF No. 12. A district court may enter a protective order upon a showing of good cause. Fed. R. Civ. P. 26(c). Having reviewed the proposed order and the record, the Court finds that good cause exists to enter the parties' proposed

1 Stipulated Protective Order. Accordingly, **IT IS HEREBY ORDERED** that the
2 Parties' Joint Motion for Entry of Stipulated Protective Order, **ECF No. 12**, is
3 **GRANTED**. The Protective Order is set forth below.

4 **I. PURPOSES AND LIMITATIONS**

5 Discovery in this action is likely to involve production of confidential,
6 proprietary, or private information for which special protection may be warranted.
7 Accordingly, the parties hereby stipulate to and petition the court to enter the
8 following Stipulated Protective Order. It does not confer blanket protection on all
9 disclosures or responses to discovery, the protection it affords from public disclosure
10 and use extends only to the limited information or items that are entitled to
11 confidential treatment under the applicable legal principles, and it does not
12 presumptively entitle parties to file confidential information under seal.

13 Therefore, it is hereby ordered that:

14 **A. "CONFIDENTIAL" MATERIAL**

15 "Confidential" material shall include the following information, documents
16 and tangible things produced or otherwise exchanged: information regarding the
17 personal, private, or financial information of persons identified in initial disclosures
18 or discovery responses by the State as victims of or witnesses to Defendants' actions
19 as alleged in the Complaint; information, documents and tangible things produced
20 concerning Defendants' current or former employees including but not limited to
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1 birth dates, social security numbers, personal contact information, personnel files,
2 medical files, psychiatric or psychological evaluations and polygraph examinations.

3 Any party may designate any record, document, tangible thing, discovery
4 response, testimony, information, or other material as confidential. All documents,
5 tangible things, discovery responses, testimony information, or other materials
6 containing confidential information pursuant to this Order shall be marked
7 “CONFIDENTAL.” Such designation shall, without more, subject the information
8 produced or provided under such designation to the provisions of this Confidentiality
9 Agreement and Protective Order.

10 **B. SCOPE**

11 The protections conferred by this agreement cover not only confidential
12 material (as defined above), but also (1) any information copied or extracted from
13 confidential material; (2) all copies, excerpts, summaries, or compilations of
14 confidential material; and (3) any testimony, conversations, or presentations by
15 parties or their counsel that might reveal confidential material.

16 However, the protections conferred by this agreement do not cover
17 information that is in the public domain or becomes part of the public domain
18 through trial or otherwise.

19 **C. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

- 20 1. Basic Principles. A receiving party may use confidential material that
21 is disclosed or produced by another party or by a non-party in

1 connection with this case only for prosecuting, defending, or attempting
2 to settle this litigation. Confidential material may be disclosed only to
3 the categories of persons and under the conditions described in this
4 agreement. Confidential material must be stored and maintained by a
5 receiving party at a location and in a secure manner that ensures that
6 access is limited to the persons authorized under this agreement.

7 2. Disclosure of “CONFIDENTIAL” Information or Items. Unless
8 otherwise ordered by the court or permitted in writing by the
9 designating party, a receiving party may disclose any confidential
10 material only to:

- 11 a. the receiving party’s counsel of record in this action, as well as
12 employees of counsel to whom it is reasonably necessary to
13 disclose the information for this litigation;
- 14 b. the officers, directors, and employees (including in house
15 counsel) of the receiving party to whom disclosure is reasonably
16 necessary for this litigation, unless the parties agree that a
17 particular document or material produced is for Attorney’s Eyes
18 Only and is so designated;
- 19 c. experts and consultants to whom disclosure is reasonably
20 necessary for this litigation and who have signed the
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1 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 d. the court, court personnel, and court reporters and their staff;

3 e. copy or imaging services retained by counsel to assist in the
4 duplication of confidential material, provided that counsel for
5 the party retaining the copy or imaging service instructs the
6 service not to disclose any confidential material to third parties
7 and to immediately return all originals and copies of any
8 confidential material;

9 f. during their depositions, witnesses in the action to whom
10 disclosure is reasonably necessary and who have signed the
11 “Acknowledgment and Agreement to Be Bound” (Exhibit A),
12 unless otherwise agreed by the designating party or ordered by
13 the court. Pages of transcribed deposition testimony or exhibits
14 to depositions that reveal confidential material must be
15 separately bound by the court reporter and may not be disclosed
16 to anyone except as permitted under this agreement;

17 g. the author or recipient of a document containing the information
18 or a custodian or other person who otherwise possessed or knew
19 the information;

20 h. a mediator or mediation service, and his, her, or its staff.

21 3. Filing Confidential Material. Before filing confidential material or

1 discussing or referencing such material in court filings, the filing party
2 shall confer with the designating party to determine whether the
3 designating party will remove the confidential designation, whether the
4 document can be redacted, or whether a motion to seal or stipulation
5 and proposed order is warranted.

6 **D. DESIGNATING PROTECTED MATERIAL**

7 1. Exercise of Restraint and Care in Designating Material for Protection.

8 Each party or non-party that designates information or items for
9 protection under this agreement must take care to limit any such
10 designation to specific material that qualifies under the appropriate
11 standards. The designating party must designate for protection only
12 those parts of material, documents, items, or oral or written
13 communications that qualify, so that other portions of the material,
14 documents, items, or communications for which protection is not
15 warranted are not swept unjustifiably within the ambit of this
16 agreement.

17 Mass, indiscriminate, or routinized designations are prohibited.
18 Designations that are shown to be clearly unjustified or that have been
19 made for an improper purpose (e.g., to unnecessarily encumber or delay
20 the case development process or to impose unnecessary expenses and
21 burdens on other parties) expose the designating party to sanctions.

1 If it comes to a designating party's attention that information or
2 items that it designated for protection do not qualify for protection, the
3 designating party must promptly notify all other parties that it is
4 withdrawing the mistaken designation.

5 2. Manner and Timing of Designations. Except as otherwise provided in
6 this agreement, or as otherwise stipulated or ordered, disclosure or
7 discovery material that qualifies for protection under this agreement
8 must be clearly so designated before or when the material is disclosed
9 or produced.

10 a. Information in documentary form: (e.g., paper or electronic
11 documents and deposition exhibits, but excluding transcripts of
12 depositions or other pretrial or trial proceedings) - the
13 designating party must affix the word "CONFIDENTIAL" to
14 each page that contains confidential material. If only a portion or
15 portions of the material on a page qualifies for protection, the
16 producing party also must clearly identify the protected
17 portion(s) (e.g., by making appropriate markings in the margins).

18 b. Testimony given in deposition or in other pretrial proceedings:
19 the parties and any participating non-parties must identify on the
20 record, during the deposition or other pretrial proceeding, all
21 protected testimony, without prejudice to their right to so

1 designate other testimony after reviewing the transcript. Any
2 party or non-party may, within fifteen days after receiving the
3 transcript of the deposition or other pretrial proceeding,
4 designate portions of the transcript, or exhibits thereto, as
5 confidential. If a party or non-party desires to protect confidential
6 information at trial, the issue should be addressed during the pre-
7 trial conference.

8 c. Other tangible items: the producing party must affix in a
9 prominent place on the exterior of the container or containers in
10 which the information or item is stored the word
11 “CONFIDENTIAL.” If only a portion or portions of the
12 information or item warrant protection, the producing party, to
13 the extent practicable, shall identify the protected portion(s).

14 3. Inadvertent Failures to Designate. If timely corrected, an inadvertent
15 failure to designate qualified information or items does not, standing
16 alone, waive the designating party’s right to secure protection under
17 this agreement for such material. Upon timely correction of a
18 designation, the receiving party must make reasonable efforts to ensure
19 that the material is treated in accordance with the provisions of this
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1 agreement.

2 **E. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

- 3 1. Timing of Challenges. Any party or non-party may challenge a
4 designation of confidentiality at any time. Unless a prompt challenge to
5 a designating party's confidentiality designation is necessary to avoid
6 foreseeable, substantial unfairness, unnecessary economic burdens, or
7 a significant disruption or delay of the litigation, a party does not waive
8 its right to challenge a confidentiality designation by electing not to
9 mount a challenge promptly after the original designation is disclosed.
- 10 2. Meet and Confer. The parties must make every attempt to resolve any
11 dispute regarding confidential designations without court involvement.
12 Any motion regarding confidential designations or for a protective
13 order must include a certification, in the motion or in a declaration or
14 affidavit, that the movant has engaged in a good faith meet and confer
15 conference with other affected parties in an effort to resolve the dispute
16 without court action. The certification must list the date, manner, and
17 participants to the conference. A good faith effort to confer requires a
18 face-to-face meeting or a telephone conference.
- 19 3. Judicial Intervention. If the parties cannot resolve a challenge without
20 court intervention, the designating party may file and serve a motion to
21 retain confidentiality. The burden of persuasion in any such motion

1 shall be on the designating party. Frivolous challenges, and those made
2 for an improper purpose (e.g., to harass or impose unnecessary
3 expenses and burdens on other parties) may expose the challenging
4 party to sanctions. All parties shall continue to maintain the material in
5 question as confidential until the court rules on the challenge.

6 **F. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
7 **PRODUCED IN OTHER LITIGATION**

8 If a party is served with a subpoena or a court order issued in other
9 litigation that compels disclosure of any information or items designated in this
10 action as “CONFIDENTIAL,” that party must:

- 11 a. promptly notify the designating party in writing and include a
12 copy of the subpoena or court order;
- 13 b. promptly notify in writing the party who caused the subpoena or
14 order to issue in the other litigation that some or all of the
15 material covered by the subpoena or order is subject to this
16 agreement. Such notification shall include a copy of this
17 agreement; and
- 18 c. cooperate with respect to all reasonable procedures sought to be
19 pursued by the designating party whose confidential material
20 may be affected.

21 **G. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a receiving party learns that, by inadvertence or otherwise, it has disclosed

1 confidential material to any person or in any circumstance not authorized under this
2 agreement, the receiving party must immediately (a) notify in writing the designating
3 party of the unauthorized disclosures, (b) use its best efforts to retrieve all
4 unauthorized copies of the protected material, (c) inform the person or persons to
5 whom unauthorized disclosures were made of all the terms of this agreement, and
6 (d) request that such person or persons execute the “Acknowledgment and
7 Agreement to Be Bound” that is attached hereto as Exhibit A.

8 **H. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE** 9 **PROTECTED MATERIAL**

10 When a producing party gives notice to receiving parties that certain
11 inadvertently produced material is subject to a claim of privilege or other protection,
12 the obligations of the receiving parties are those set forth in Federal Rule of Civil
13 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
14 may be established in an e-discovery order or agreement that provides for production
15 without prior privilege review. The parties agree to the entry of a non-waiver order
16 under Federal Rules of Evidence 502(d) as set forth herein.

17 **I. NON-TERMINATION AND RETURN OF DOCUMENTS**

18 Within 60 days after the termination of this action, including all appeals, each
19 receiving party must return all confidential material to the producing party, including
20 all copies, extracts and summaries thereof. Alternatively, the parties may agree upon
21 appropriate methods of destruction.

1 Notwithstanding this provision, counsel are entitled to retain one archival
2 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
3 correspondence, deposition and trial exhibits, expert reports, attorney work product,
4 and consultant and expert work product, even if such materials contain confidential
5 material.

6 Nothing in this Protective Order shall be construed to require the City of
7 Sunnyside or the Civil Rights Division of the Washington Attorney General's Office
8 (hereinafter "CRD") to violate the terms of Washington's Public Records' Act,
9 Wash. Rev. Code § 42.56, Wash. Rev. Code § 40.14, which governs preservation
10 and destruction of government records, or any other statute, administrative rule, or
11 court rule. If at any time the City or CRD receives a request pursuant to the
12 Washington Public Records Act, Wash. Rev. Code § 42.56, that would compel
13 disclosure of any documents or information designated in this action as
14 "Confidential," the City or CRD shall give written notice and a copy of the request
15 to the designating party, through its attorney of record, within five (5) business days
16 of receiving the request or determining that the request calls for documents or
17 information designated in this action as "Confidential." If the requesting party seeks
18 to compel the City or CRD to disclose the documents or information designated as
19 "Confidential" through a proceeding before a court or regulatory body, the City or
20 CRD shall provide the designating party, through its attorney of record, with notice
21 of the proceeding within five (5) business days of service of such proceeding. The

1 City or CRD will not produce confidential information or documents subject to such
2 a request unless either authorized by the designating party to do so, or if the
3 designating party seeks judicial intervention within the time allotted for the City or
4 CRD to respond to the request, is ordered to do so by the court.

5 The confidentiality obligations imposed by this agreement shall remain in
6 effect until a designating party agrees otherwise in writing or a court orders
7 otherwise.

8 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the
9 production of any documents in this proceeding shall not, for the purposes of this
10 proceeding or any other proceeding in any other court, constitute a waiver by the
11 producing party of any privilege applicable to those documents, including the
12 attorney-client privilege, attorney work-product protection, or any other privilege or
13 protection recognized by law.

14 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
15 Order and provide copies to counsel.

16 **DATED** July 22, 2020.

17 *s/ Rosanna Malouf Peterson*
18 ROSANNA MALOUF PETERSON
19 United States District Judge
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